

EXPLANATORY MEMORANDUM TO
THE FIRST-TIER TRIBUNAL AND UPPER TRIBUNAL (CHAMBERS)
(AMENDMENT) ORDER 2023

2023 No. 769

1. Introduction

- 1.1 This explanatory memorandum has been prepared by The Ministry of Justice and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 This Order amends the First-tier Tribunal and Upper Tribunal (Chambers) Order 2010 (“the 2010 Order”) to reflect the conferral of further jurisdictions on the First-tier Tribunal and Upper Tribunal relating to applications for authorised costs orders under section 324A (power to authorise costs to be incurred in relation to proceedings) of the Charities Act 2011 (c. 25) and conferral of further jurisdiction on the First-tier Tribunal in respect of appeals from financial penalties imposed for breaching adult social care information provisions under the Adult Social Care Information (Enforcement) Regulations 2022 (S.I. 2022/1175). It also makes minor amendments to reflect legislative changes.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument is England and Wales, Scotland and Northern Ireland.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

6. Legislative Context

- 6.1 The First-tier Tribunal and Upper Tribunal (Chambers) Order 2010 (“the 2010 Order”) organises the First-tier Tribunal and Upper Tribunal into chambers and makes provision for the allocation of those tribunals’ functions between the chambers.
- 6.2 This Order amends the 2010 Order to reflect the conferral of further jurisdictions on the First-tier Tribunal and Upper Tribunal relating to applications for authorised costs orders under section 324A (power to authorise costs to be incurred in relation to proceedings) of the Charities Act 2011 and conferral of further jurisdiction on the First-tier Tribunal in respect of appeals from financial penalties imposed for breaching

adult social care information provisions under the Adult Social Care Information (Enforcement) Regulations 2022.

- 6.3 This Order also makes minor amendments providing correct referencing to reflect the legislative changes made by the Charities Act 2011 which repeals and replaces the Charities Act 1993 (c. 10).

7. Policy background

What is being done and why?

Authorised cost orders – Charities Act 2011

- 7.1 Section 36 of the Charities Act 2022 has amended the Charities Act 2011 by including a new section 324A, providing for an authorised costs order (“ACO”) to be made by the Tribunal. Both the First-tier Tribunal and the Upper Tribunal have jurisdiction to make ACOs. An ACO is akin to a Beddoe Order made in the High Court, in that it will authorise the incurring of costs from charity funds in conducting anticipated or current proceedings in the Tribunal.
- 7.2 An application for an ACO comprises separate proceedings to any current or anticipated proceedings. This Order allocates such applications to be heard in the General Regulatory Chamber (“GRC”) of the First-tier Tribunal, where an application is made in the First-tier Tribunal, and to the Tax and Chancery Chamber of the Upper Tribunal, where an application is made in the Upper Tribunal.

Financial penalties imposed under the Adult Social Care Information (Enforcement) Regulations 2022

- 7.3 Section 100 of the Health and Care Act 2022 inserted section 277E to the Health and Social Care Act 2012 (“the 2012 Act”) and enables the Secretary of State (“SoS”) to make provision by regulations to impose a financial penalty on regulated private providers of social care who fail without reasonable excuse to comply, with a requirement to provide information imposed under section 277A(1) of the Health and Social Care Act 2012; or provides information that is false or misleading to a material extent.
- 7.4 The Adult Social Care Information (Enforcement) Regulations 2022 (“the Regulations”) is made in exercise of that power. The Regulations allow a provider against whom a penalty notice is issued to appeal to the First-tier Tribunal within 28 days against a decision of the SoS to impose a penalty as well as the amount of the penalty. On an appeal the Tribunal will be able to confirm, quash, or vary the penalty notice.
- 7.5 Under the 2010 Order such appeals would by default be heard by the GRC. Following consultation with the Senior President of Tribunals, Chamber Presidents and the Department of Health and Social Care our view is that the most appropriate Chamber of the First-tier Tribunal to hear these appeals would be the Health, Education and Social Care Chamber (“HESC”).
- 7.6 To reflect this requirement this Order amends the 2010 Order to allocate these appeals to be heard by the HESC Chamber. Those consulted upon also considered it appropriate for the provision allocating such cases to be drafted widely to enable it to capture any further regulations that may be made in future under the enabling power so that any appeals under those provisions are also heard in the HESC Chamber.

Other changes

- 7.7 This Order makes minor amendments to the 2010 Order to reflect the changes made by the Charities Act 2011 which repeals and replaces the Charities Act 1993. The amendments reflect correct referencing to the relevant provisions of the Charities Act 2011.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 No consolidation is taking place.

10. Consultation outcome

- 10.1 No public consultation has been undertaken in relation to the amendments made by this Order as there is no statutory requirement to do so. Informal consultation has been undertaken with the Senior President of Tribunals, Chamber Presidents and the Department of Health and Social Care.

11. Guidance

- 11.1 This Order does not attract the need for guidance but general information about tribunals can be found on the Ministry of Justice website at:
<https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about>

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because the impact is expected to be minimal and well below the threshold of £5 million per annum at which an assessment must be prepared.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The Ministry of Justice continually keeps Tribunal performance under review.

15. Contact

- 15.1 Nick Peel at the Ministry of Justice Telephone: 07977 219569 or email: nick.peel@justice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Sarah Adams/Isobel Clarke, Deputy Directors for the Courts and Transparency Policy Team, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Parliamentary Under Secretary of State Lord Bellamy KC at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.